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Internal
c/015/0018

From: Daron Haddock
To: Dana Dean; Jim Smith
Date: 7/21/2008 10:09 AM
Subject: Fwd: Proposed Memorandum of Understanding - XTO Energy's Oil & Gas Development
Well Site - Deer Creek Mine Permit
Attachments: Proposed Memorandum of Understanding - XTO Energy's Oil & Gas Development
Well Site - Deer Creek Mine Permit

Q

Forwarding this email. You probably want to be aware of this. We may want to run this through legal council?

From: "Child, Scott" <Scott.Child@PacifiCorp.com>
To: "Kurt Higgins [khiggins@utah.gov]" <khiggins@utah.gov>, "John Baza" <joh...
CC: "Fleck, Ken" <Kenneth.Fleck@PacifiCorp.com>, "Oakley, Dennis" <Dennis.Oa...
Date: 7/18/2008 12:28 PM
Subject: Proposed Memorandum of Understanding - XTO Energy's Oil & Gas Development Well Site - Deer Creek Mine Permit
Attachments: XTO001.PDF

To: Kurt Higgins/John Baza/Daron Haddock/Jim Davis

We (Ken Fleck and I) met with representatives of XTO Energy today to once again discuss their oil & gas development project within Deer Creek Canyon on state lands to be jointly being used by our Deer Creek Mine operations and XTO Energy's future well site. As mentioned in our earlier discussions, we've expressed concerns with XTO developing an access road on the uphill side adjacent to the Deer Creek Mine conveyor belt, plus having 3rd party disturbances being conducted with the Deer Creek Mine permit. To hopefully address the issues we've proposed the following to XTO:

1. License Agreement with Surface Owner Consent - this will allow for the construction of the access road, pipelines etc. on PacifiCorp lands. (not attached)
2. Memorandum of Understanding - Where the well pad and road are located on SITLA lands of which PacifiCorp also holds an interest under Special Use Lease Agreement #1382 with SITLA, and where it is also located within the Deer Creek Mine permit boundary, we are proposing this MOU to address the land use activities between the parties and the regulatory enforcement agencies. We are proposing that all parties (PacifiCorp, XTO, SITLA and DOGM) sign this MOU. (See attachment.)

We are sharing this MOU with you for your consideration as we move this effort forward. Please review and advise accordingly. Your attention to this matter is greatly appreciated.

Thanks,

Scott M. Child

[cid:406344517@18072008-1B48]

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Salt Lake City, UT 84116

801-220-4612 (Office)

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Scott.Child@PacifiCorp.com<mailto:Scott.Child@PacifiCorp.com>

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**MEMORANDUM OF UNDERSTANDING ("MOU") BETWEEN
PACIFICORP
XTO ENERGY ("XTO")
STATE OF UTAH, DIVISION OF OIL GAS AND MINING ("Division")
AND
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION ("SITLA")
FOR THE PURPOSE OF ALLOCATING RESPONSIBILITIES IN CONNECTION
WITH JOINT OPERATIONS ON CERTAIN LANDS IN EMERY COUNTY UTAH**

I. BACKGROUND/PURPOSE

PacifiCorp is conducting coal mining and reclamation operations on certain lands in Emery County, Utah pursuant to a coal mining permit issued by the Division identified as C/015/0018 (Deer Creek Mine) within the bounds of a mine permit area shown in part on ~~Exhibit A~~ attached hereto and by this reference made a part hereof. PacifiCorp conducts those operations on its own fee lands in Section 1, Township 17 South, Range 7 East, SLB&M, and under the terms of a "Special Use Lease Agreement, No. 1382" issued by SITLA effective as of December 9, 2002 covering lands in Section 2: SE1/4, Township 17 South, Range 7 East, SLB&M.

XTO is the owner of operating rights under "Oil Gas and Hydrocarbon Lease" ML - 48003 issued by SITLA covering lands in Section 2: SE1/4, Township 17 South, Range 7 East, SLB&M, among other lands.

Under the terms of the approved Deer Creek Mine permit, PacifiCorp can be held responsible for all surface disturbing activities conducted within the boundaries of its "permit area" as identified in the permit issued by the Division. XTO has the legal authority under Lease ML - 48003 and a License Agreement issued by PacifiCorp to conduct oil and gas related operations on the surface of lands within PacifiCorp's permit area.

XTO and PacifiCorp agree that each should be responsible for its own actions and that neither should be held responsible for the actions of the other. The Division has authority over the conduct of both oil and gas operations and coal operations pursuant to existing law and regulations. SITLA has responsibility as the owner/lessor under ML - 48003 and SULA No. 1382.

The parties are entering into this MOU to confirm the responsibilities of the various parties and to ensure that each of XTO and PacifiCorp are authorized to conduct their operations in accordance with their existing rights while both the Division and SITLA exercise their statutory and regulatory obligations with regard to the protection of resources.

II. AUTHORITIES

This MOU is entered into under the following authorities:

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PacifiCorp:

Fee ownership of lands.
SULA No. 1382
Permit No. C/015/0018

XTO:

ML - 48003
PacifiCorp License Agreement

Division:

Oil and Gas Operations – UCA Title 40, Chapter 6.
Coal Operations – UCA Title 40, Chapter 10.

SITLA:

UCA Title 53C, Chapter 2, Part 4 and Chapter 4.

III. AREAS OF COOPERATION

A. XTO Responsibilities

1. XTO will conduct its activities in such a way that any existing and future operations of PacifiCorp are not interfered with by the operations of XTO.

2. XTO agrees that if XTO, its agents, contractors or employees cause any damage to any property of PacifiCorp, or cause PacifiCorp to incur any additional expense because of XTO's activities, including, but not limited to, impacts to existing and future structures and facilities and the delivery of coal to PacifiCorp's Huntington Power Plant, XTO shall repair the damage and/or compensate PacifiCorp (or any third party owners) for the reasonable value of any property so damaged and will reimburse PacifiCorp for all reasonable costs incurred in connection with such activities. XTO further agrees to indemnify and save PacifiCorp harmless from any claims that may be asserted against PacifiCorp that arise by reason of the operations undertaken within the permit area by XTO. This indemnification shall include, but not be limited to, any and all reasonable costs incurred by PacifiCorp in connection with enforcement actions taken by the Division or the Office of Surface Mining Reclamation and Enforcement under State and Federal surface mining laws.

3. Prior to conducting any activities within the permit area, XTO will provide PacifiCorp with no less than thirty (30) days written notice of the proposed activity at the address provided below. In response to said notice, PacifiCorp will review the proposed activity and provide XTO with a written response no more than thirty (30) days following receipt of the notice at the address provided below. In the event PacifiCorp identifies issues related to the activity that would interfere with the operations of PacifiCorp within the permit area, or if PacifiCorp in good faith believes such activities will cause PacifiCorp to be in violation of law, it will so notify XTO. If any activity requires action by the

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Division, PacifiCorp agrees to cooperate in identifying potential impacts to the permit area and to provide guidance in connection with the permitting of the XTO activities. All reasonable activities required to be undertaken by PacifiCorp in response to a proposed XTO activity shall be at XTO's expense and the fees paid to PacifiCorp will reflect the fees paid to competent third party consultants for the same or similar services. XTO and PacifiCorp agree that any dispute which they cannot mutually resolve with respect to such activities will be referred to the applicable governmental agency or agencies having authority over the permit area under State and Federal laws for resolution.

4. If any of the activities of XTO related to access and/or development of ML - 48003 interfere with or impede the coal mining activities of PacifiCorp, then PacifiCorp and XTO shall agree upon a mutually acceptable location at which to relocate such activities to a point where interference does not exist.

5. If any activities of XTO interfere with the existing or potential operations of PacifiCorp, or otherwise cause PacifiCorp to be in violation of any law, rule or order applicable to PacifiCorp, XTO shall only proceed with such activities under a plan of operations whereby PacifiCorp is given reasonable assurance that all past and future activities of XTO will be in accordance with such laws, rules and orders as may be applicable to PacifiCorp, and XTO will take such action as may be necessary at its own expense to cause PacifiCorp to be in compliance with any such law, rule or order.

6. After XTO activity has been permitted in accordance with the preceding paragraphs and not less than twenty-four (24) hours before conducting any surface disturbing activities within the permit area, XTO will provide verbal notice to PacifiCorp at the address specified below of its intent to commence the activity:

Written and verbal notices for PacifiCorp shall be provided to:

Deer Creek Mine Manager
Energy West Mining Company
15 North Main Street
P.O. Box 310
Huntington, Utah 84528
Phone: 435-687-2317
Fax: 435-687-2695

With notice to:

Kenneth S. Fleck, Geology and Environmental Affairs Manager
Energy West Mining Company
15 North Main Street
P.O. Box 310
Huntington, Utah 84528
Phone: 435-687-4712
Fax: 435-687-2695

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Written and verbal notices for XTO shall be provided to:

B. PacifiCorp Responsibilities

1. PacifiCorp agrees that it will not interfere with the exercise by XTO of any rights XTO has obtained from underlying property owners and that PacifiCorp will allow XTO the unimpeded and unobstructed access across any portion of the permit area for the purpose of conducting its operations so long as such operations do not interfere with the operations of PacifiCorp and are in compliance with existing law and regulations.
2. Upon receipt of notice from XTO of proposed surface disturbing activities within PacifiCorp's permit area as provided above, PacifiCorp will notify the Division of the activities proposed by XTO and the potential impact on existing permitted activities within the permit area. To the extent that the Division determines that the activities proposed by XTO are within the scope of activities that are currently permitted no further action will be taken by PacifiCorp.
3. If the Division determines that the activities proposed by XTO within the permit area require modification of its permit by PacifiCorp prior to any activity by XTO, PacifiCorp shall so notify XTO and XTO and PacifiCorp shall both promptly meet with the Division to determine a course of action that will expedite the permitting process to allow XTO to exercise its rights and develop the oil and gas resource.

C. Division Responsibilities

1. Upon receipt of notification from PacifiCorp and/or XTO that XTO intends to conduct surface disturbing activities within the PacifiCorp permit area under authority of its oil and gas rights the coal program and the oil and gas program of the Division shall communicate to determine the appropriate action of the Division in order to expedite the processing of the permits required to be issued by the Division.
2. To the extent allowed by law, the Division shall take action to insure that PacifiCorp is not held responsible for the activities of XTO within the PacifiCorp permit area. Specifically, the Division's oil and gas program will not authorize XTO activities within the PacifiCorp permit area until the Division's coal program is satisfied that PacifiCorp will not be held responsible for XTO's activities.
3. In the event the Division's coal program determines that the activities proposed by XTO within the PacifiCorp permit area will require a modification to the PacifiCorp

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permit or a change in post mining land use under the PacifiCorp permit, the Division will work with both XTO and PacifiCorp to insure that the required approval process is expedited to the extent possible to allow the conduct of the proposed XTO activities.

4. The Division will not issue a notice of violation to PacifiCorp under the coal program for activities conducted by XTO within PacifiCorp's permit area that have been authorized by the oil and gas program of the Division.

D. SITLA Responsibilities

1. SITLA will exercise its rights as the owner of the lands subject to ML - 48003 to ensure that the Division's requirements are fully satisfied in a prompt and expeditious manner and the resources within the permit area are protected.

2. SITLA will insure that the respective rights of PacifiCorp under SULA No. 1382 and XTO under ML - 48003 are fully protected and enforced as provided in those documents.

IV. ADMINISTRATIVE AND LEGAL PROVISIONS

A. Modifications

Modifications to this MOU may be proposed by PacifiCorp, XTO, SITLA and the Division and shall become effective upon the written approval by all parties.

B. Termination

Any party may terminate their participation in this MOU after thirty (30) days written notice to the other parties of their intention to do so.

C. Effective Date

This MOU will become effective when it is signed by all parties. The MOU will remain in effect until the PacifiCorp permit is terminated or the area of XTO activities within the present permit area have been deleted from the PacifiCorp permit area.

D. Limitations

Nothing in this MOU will be construed as limiting or affecting in any way the authority or responsibility of the Division or SITLA or be binding on the Division or SITLA to perform beyond their authority.

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V. SIGNATURES

PACIFICORP

By: _____

Date

Its: _____

XTO ENERGY

By: _____

Date

Its: _____

STATE OF UTAH, DIVISION OF OIL GAS AND MINING

By: _____

Date

Its: _____

STATE OF UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

By: _____

Date

Its: _____

M.O.U.

MAP 1

ENERGY WEST MINING CO.

D.C. MINE

ACCESS & UTILITY CORRIDOR

FOR XTO ENERGY GAS WELL